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BURIALS QUESTION.

BY

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BURIALS.

THE law relating to interment may be gathered from the following authorities collected, or rather dispersed, in Sir R. Phillimore's "Ecclesiastical Law":—

"By the custom of England any person may ^{Degge, p. 1, c. 12.} be buried in the churchyard of the parish where he died."

"Every person dying in the country and not ^{Reg. v. Stewart, 12 A. & E. 773.} within certain ecclesiastical prohibitions, is entitled to Christian Burial."

"I take the soil or surface to belong in general ^{Dr. Harris (1780).} to the minister, and the interior part to the parishioners for burial."

"The clergyman cannot refuse to bury anybody ^{Dr. Swabey (1805).} dying in the parish, which (*sic*) is of right the proper cemetery for their (*sic*) reception."

"Burial in the parish churchyard is a Common ^{R. v. Coleridge, 2 B. & Ald. 806.} Law right inherent in the parishioners."

It should be observed, and may be regretted, that Sir R. Phillimore, in preserving from oblivion the opinions of Dr. Harris and Dr. Swabey, (the latter of whom does not seem to have been an

expert grammarian, however eminent he may have been as a civilian,) has omitted to find space for the opinion of Lord Comyn. That great authority states the rule of law as follows:—

<sup>Comyn's
Digest, Tit.
Cemetery.</sup> “Every person (who may have Christian burial), may have burial in the churchyard where he dies, by the general custom of England.”

Correlative to the right of interment vested in the deceased person, or, if it seem paradoxical to speak of rights belonging to the dead, correlative to the right of his family or friends to have their dead buried, is the duty, also derived from the Common Law, of disposing of the corpse. It seems that

<sup>Reg. v.
Stewart,
12 A. & E.
773.</sup> “Every householder in whose house a dead body lies is bound by the Common Law to inter the body decently.”

A question of great importance has been raised as to the nature and extent of the right of an individual to sepulture in the churchyard of the parish in which he lived. Mr. Osborne Morgan, in moving the second reading of the Burials Bill in 1873, is reported to have said that—

<sup>Hansard,
March 26,
1873.</sup> “Every person who has gained a settlement in the parish, be he Jew, infidel, or heretic, has the same right of interment in the churchyard of his parish as . . . the most orthodox Churchmen.”

It is plain therefore that Mr. Morgan believes in the existence of a legal right to bare interment in the parish churchyard, distinct from the right

to interment (to use the words of the 68th Canon of 1603), "in such manner and form as is prescribed in the (said) Book of Common Prayer."

But of the existence of this supposed right to bare interment without the burial office, what evidence is there? In the Book of Church Law it is laid down that "no person may be buried in the churchyard without the full Burial Service being performed." And in Sir R. Phillimore's work, Sir John Nicholl is cited as holding that— "Our Church knows no such indecency as ^{Kemp v.} putting the body into the consecrated ground ^{Wickes, 3} _{Phill. 295.} without the Service being at the same time performed."

But let us push our inquiries into this matter a little further. The rubric at the head of the Order for the Burial of the Dead enjoins as follows:—"Here it is to be noted that the office ensuing ^{Rubric.} is not to be used for any that die unbaptized, or excommunicate, or have laid violent hands upon themselves."

Now, if Mr. Morgan's theory of a bare right of interment be correct, it would follow that persons falling within any of the categories above mentioned, though not entitled to have the Burial Service performed over their remains, would yet be entitled to a resting place in the parish churchyard.

How stand the facts?

1. First, let us take the case of suicides. Black- ^{Vol. IV.} p. 190.

stone in his “Commentaries” asks the question, “what punishment can human laws inflict on one who has withdrawn himself from their reach? They can only act,” he replies, “upon what he has left behind him—his reputation and fortune.” “The law of England,” he goes on to say, “acts on the former by an ignominious burial *in the high way* with a stake driven through his body.” It

^{4 Geo. IV.} was not until the reign of George IV. that this
_{c. 52.}

savage custom was abolished, and that the body of the suicide was authorized to be interred silently and at night in the churchyard, to a place in which Mr. Morgan thinks every parishioner is entitled by the Common Law. In pursuance of this argument, it may be interesting to examine the scene in “Hamlet” where the burial of Ophelia takes place. The coroner’s inquest had resulted in a verdict favourable to the deceased. The clergy, it would seem, entertained a less indulgent view of the manner in which Ophelia had come by her death. Hamlet notes the “maimed rites,” and instantly divines the cause. Laertes asks, “What ceremony else?” and gets for answer that no more may be done, and that his sister was not entitled to so much. But for extreme pressure put upon the ecclesiastical authorities—

“ She should *in ground unsanctified* have lodged
Till the last trumpet; for charitable prayers,
Shards, flints, and pebbles should be thrown on her.”

2. This leads us to consider next the case of persons excommunicate. "Everywhere," writes Mr. Hallam, "the excommunicated were debarred of a regular sepulture, which, though obviously a matter of police, has through the superstition of consecrating burial grounds, been treated as belonging to Ecclesiastical control."

This position will be confirmed by a reference to Du Cange's great work (*sub voce*, "Imblo-<sup>Du Cange,
S. v. Im-</sup> catus.") There it is clearly shown that the ex-communicate forfeited not only all claim to the performance over their bodies of the accustomed service, but also the right to interment in consecrated ground.*

But the case does not rest merely upon the authority of learned writers. There are historical examples which afford a valuable clue to the sound interpretation of the law. The case of one Tracy is cited by Sir R. Phillimore, but the more illustrious fate of Wickliffe and Bucer occurs with greater readiness to the student of history. In all these cases the law was strong

Publica-
tions of the
Parker
Society,
Works of
Tindal,
Pilkington,
Bale.
See Gene-
ral Index.
See also
Words-
worth's
Eccl. Biog.
Vol. I.

* Cum legibus ecclesiasticis vetaretur, excommunicatorum corpora sepelire, non modo in cœmiteriis benedictis et consecratis, sed ne quidem in humum ubivis mittere, proindeque necesse esset in plateis aut agris insepulta relinquere; ne tamen foetor nares, aut spectaculi horror mentes foedaret, illa ut plurimum humo injecta, aut tumultuaria lapidum congerie operire solebant, idque *Imblocare* dicebant nostres Belgæ, quibus *bloc* est tumulus quidam altior.—Du Cange, Glossarium, sub voce *Imblocatus*.

enough to invade even the tomb, and the bones of the dead were disinterred in obedience to a posthumous sentence.

3. The case of the unbaptized is similar to that of the excommunicate. If those who were excluded from a communion to which they had once belonged, had no claim to rest in consecrated ground, it follows, *pari ratione*, or even *à fortiori*, that no such claim could be asserted on behalf of those who had never been admitted into the fold. Even Bullinger did not claim more for the unbaptized infant than a resting place in the “*Cœmterium innocentium*,” a kind of middle space between consecrated and unsanctified ground.

The conclusion is, therefore, that the Common Law knows no right to bare interment in the churchyard without the Burial Service. The only right which exists at the Common Law is an indivisible right on the part of the parishioner to Christian burial, that is, to burial coupled with the office of the Church. And conversely, the clergyman is bound to perform the entire Burial Service over every body that is interred in the churchyard, those cases only being excepted which are the subject of special statutory provision.*

This being the law, (whatever may in some

* Among these exceptions would fall the case of the “washed up Malay,” upon whose fictitious rights Mr. Osborne Morgan has lately expatiated with such exuberant pathos (or bathos), before the inhabitants of Wrexham.

districts of the country have been the practice), various difficulties have from time to time occurred in the operation of it. Within the Church of England itself, clergymen have protested against the obligation of reading the Burial Service over the graves of parishioners whose lives had been scandalous, and were perhaps ended in drunkenness. Both clergy and laity have felt the harshness of the law which denies to innocent babes, dying unbaptized, any form of Christian service.

But the difficulties about which we are specially concerned at the present time are those which have been, and continue to be, experienced in some cases by those who do not reckon themselves as members of the Church of England. These difficulties may be classed under two heads.

1. Where a deceased parishioner claims interment with the Service of the Church of England in the parish churchyard, but for want of baptism is disqualified from receiving it.

2. Where a deceased parishioner, baptized or unbaptized, claims interment in the parish churchyard :

(a.) Without any service or ceremony whatever; or,

(b.) With a service or ceremony which is not that of the Church of England.

Now as regards the first head of difficulty, or, as it is generally called, grievance, it is not

necessary to say much. First of all, however, it may be remarked that it is a grievance which presses in the same way on Church people as on any others. Secondly, it is a grievance of very rare occurrence outside the Church. And when grievances of this kind are alleged to have happened, it will generally be found that what really happened was an indiscretion on the part of the parish clergyman, in refusing to recognize as valid baptism which had been conferred by the hands of a layman, or of a dissenting minister.

These cases, however, are the stock in trade of those who agitate for an alteration in the law. And it is curious to note with what airy recklessness of inconsistency the declaimers on this subject impute to the law the errors of the clergy; and then, when it serves the turn, visit upon the clergy the defects of the law.

I pass on to the second head of grievance. A parishioner, not a member of the Church of England, dies. A desire is expressed on his behalf for interment in the parish churchyard without the Burial Office of the Church, and, it may be, with a service or ceremony such as is usual in the denomination to which the deceased belonged. Then arises a dilemma: if he died unbaptized, he cannot claim to be buried in the churchyard at all; if he had been baptized, he can be buried only with the Service of the Church of England.

This is the grievance which has for many years past been the subject of excited discussion, and of several abortive attempts at legislation.

I propose to say a few words upon the history and nature of the grievance, and then to consider the remedies by which it has been proposed to give relief to those upon whom the grievance presses.

It appears that originally the complaint arose from the Baptists; and Sir Morton Peto's Bill was, in 1861, I believe, intended primarily for the benefit of that sect. In the course of discussion, however, it came to be remembered that the Quakers were interested in the matter equally with the Baptists. And by degrees it seems to have been discovered (especially on the assumption of a Common Law right to interment, as such, in the parish churchyard on the part of all persons dying in the parish), that Jew, Turk, Infidel and Heretic, are equally interested with the Baptist and the Quaker.

But between the introduction of Sir Morton Peto's Bill in 1863, and Mr. Osborne Morgan's Bill in 1870, a measure was passed, the enactment of which materially affected the position of the parties who demanded relief from the operation of the existing law. At the former date the Dissenter was in a position to say: "I pay Church-rates; why am I then either excluded altogether from the use of the churchyard, or, if I use it, con-

strained to put up with rites and ceremonies to which on principle I conscientiously object?"

The Dissenter was relieved from the obligation to pay Church-rates, and in 1870 this argument was no longer available to him. It was perhaps for this reason that Mr. Osborne Morgan has taken upon himself to rely upon a supposed Common Law right to interment in the parish churchyard vested in every parishioner, or rather in every person dying in the parish. The theory that such a right exists or ever did exist has already been shown to be an unverified and unverifiable hypothesis ; the authorities do not warrant it ; and history negatives the supposition.

With many who demand a reform in the law of Burial, the dominant motive whether avowed, or concealed, or indeed formally repudiated, is the desire to obtain the dis-establishment of the Church. They regard the Burials Bill as part payment of their demand. With such it is not intended to argue here. If the Church is to be dis-established, let it be dis-established when the time is ripe, after full discussion, and with plenary recognition of the vastness and gravity of the change. To dis-establish the Church piecemeal would be a policy of madmen.

There remains to be noticed the argument founded on the practical inconvenience caused by the law as it stands at present. Under the term " practical inconvenience " I include not only the

delay, expense, and vexation which in the existing state of things are now and then entailed upon the friends of a deceased person, but also the injury done to the feelings of mourners who, by the exclusiveness of the law, are compelled to separate in death, those who in life were united by the ties of marriage or of kin. I include also the scandal which occasionally arises from what seems to be the harsh conduct of the parish clergyman, and from the impossibility of getting the “common people” to understand why a person of pious and exemplary life, should be, owing to the mere accident of his religious persuasions, debarred from privileges which are accorded to the profane, the unclean, and the drunken.

The “practical inconvenience” thus understood I take to be the exact measure of the alleged “grievance.” No doubt, even thus limited, the grievance is capable of being greatly exaggerated. To gauge with precision the extent of it, we must eliminate,

First, all those cases in which provision is made for sepulture in cemeteries other than the church-yards;

Next, all those cases in which, although no such provision exists, graveyards are attached to the chapels, or are in the possession of Nonconformists;

Thirdly, all those cases in which the absence of

such graveyards or cemeteries is rendered immaterial by the absence of Dissent; and,

Lastly, all those cases in which although there are Nonconformists, and although there is no graveyard accessible except the churchyard, no difficulty arises because the Nonconformists are qualified and willing to receive interment at the hands of the clergyman in consecrated ground.

Now it is plain that when these various cases have been eliminated, the residuum of grievance is not very large. In the absence of authentic information it is not easy to calculate the amount of it. But, as the saying is, “a straw will show which way the wind blows.” And, if the grievance be one which is of frequent occurrence, I should be curious to know how it is that the stock of unsavoury stories about unburied bodies, about “sacerdotal intolerance,” and so forth, with which the grievance-mongers regale the public is so exceedingly meagre?

But a grievance on all hands there is admitted to be, and on all hands it is agreed that a remedy ought to be found.

Before proceeding to discuss in detail the remedies which have been proposed, it may not be amiss to direct attention to one feature of the question which in the ardour of debate is apt to escape notice. There are many branches of our social economy which in times past wore a pre-

vailing ecclesiastical aspect, but which the gradual revolution of thought and manners has more or less completely secularized. It has been so, for instance, with the law of marriage. So it has with the law of testamentary dispositions ; so it has with the relief of the poor ; so it has to some extent with the subject of education ; and so also has it been with the question of burial. Those considerations of public health and public decency, which press upon modern society with overwhelming force had little or no place in the thoughts of our ancestors. I take one illustration. From March 1208 to June 1214, England was under Interdict. During all that time the dead had, to use the bluff language of Inett, “the burial of the ox and the ass.”

Inett in
Words-
worth's
Eccl. Biog.
Vol. I.

To us it seems almost inconceivable that the nation should, even in those rude times, have been so destitute of the sense of decency, and so blind to the dangers of pestilence, as to tolerate the continuance of such a state of things. If we cannot recognize with Hallam any superstition in consecrating the graveyard, we are nevertheless agreed that sepulture is “obviously” and indeed chiefly “an affair of police.”

Regarding the matter in this light, the plain duty of the legislature is to afford ample facilities to all, of fulfilling the obligations which by law all have to discharge. Now it is a matter of notoriety that in many instances, (I am speaking now more particularly of rural districts,) the

churchyards are already crowded to inconvenience, or are likely soon to become so. Further, it will be generally conceded, that the practice of accumulating graves round the churches and among dwelling houses, (the parsonage being commonly the most exposed to danger), is one which sanitary science condemns. From time to time we hear of the outbreak of obscure and malignant disorders which are traced to the influence of subtle percolations from the graveyard. These are warnings not to be despised. With respect to districts thus endangered, the proper course for the legislature to pursue is to enable some description of local authority, either separately or in combination with others, to provide cemeteries for the use, and, in part at least, at the expense, of those dwelling within the area of their jurisdiction. It would be necessary to provide at the same time, for closing churchyards, with the approval perhaps of a responsible Minister of the Crown, in cases where proof is given that it is inexpedient to allow fresh burials to take place in them.

But, at the least, until cemeteries shall have been provided by the local authorities, I am of opinion that it would be right to relax the condition upon which those who are not members of the Church of England have access to the parish churchyards.

Two Bills were last session introduced in the

House of Commons having this object.* The Bill which was introduced by Mr. Talbot simply provided that at the desire of a deceased person or of those responsible for his burial, signified in writing, the body of that person should "be entitled to a decent and solemn interment in the churchyard" of the parish in which he died, without the Burial Service being performed, but that "no service of any kind whatever" should "be used, read, or performed at such interment within the churchyard or the precincts thereof."

The rival scheme which was embodied in Mr. Osborne Morgan's Bill, is more complex and more ambitious. So far as the burial of persons without the Burial Service is concerned, this scheme proceeds on the same lines as the competing Bill, though Mr. Morgan's Bill has in my judgment the advantage in point of precision.

Whether under the provisions of either Bill, unbaptized persons would be any better off than they now are, is open to grave doubt. Indeed Mr. Osborne Morgan's Bill seems expressly to exclude such persons, for the sixth clause runs as follows, "Nothing in this Act shall authorize the burial of any person in any place where, previous to the passing of this Act, such persons (*sic*) would have had no right of interment."

I have already expressed an opinion that no unbaptized person has a right to burial in consecrated

* See Appendix.

ground. Waiving this point however, the main feature of Mr. Osborne Morgan's Bill is the provision contained in the fourth clause for the admission at any burial performed under the Act of "all persons" to the churchyard, and for the conduct of "a service," or participation "in any religious act" by "any person or persons who shall be thereunto invited."

It will be observed that no qualification of any kind is placed on the service authorized to be performed. Agreeably to his theory of a Common Law right to interment vested equally in Jew and Mahometan, in Brahmin and Buddhist, in the worshipper of "Mighty Mumbo-Jumbo," and in the worshipper of "no god except himself, and of his belly, first of deities," Mr. Osborne Morgan has not thought it necessary to impose any restrictions, beyond those of civil order, on the character of the proceedings which are to take place in graveyards, consecrated with a Christian ceremony, consecrated in a still higher sense by a blended multitude of Christian sentiments, environing buildings set apart for Christian worship, and (to forget nothing) maintained at the expense of Christian worshippers.

It is idle to discuss propositions such as these. But it may be asked whether, on the assumption that admission to the churchyard is to be granted to those whom the law now excludes from it, it might not be as well to accompany this concession

with such further relaxations as would seem, in a fair view, necessary to make the boon offered a boon appreciated? In my opinion, a scheme could be devised with little difficulty, which, abstaining so far as possible from giving to outsiders privileges in the churchyard which the members and ministers of the Established Church themselves do not possess, should give to those Christian denominations which are aggrieved by the law all the relief that they can reasonably claim.

That such a scheme should be framed, and should pass into law, is eminently desirable. It would end a long, and, it must be confessed, a mean as well as a bitter quarrel.

I urge concession. Not in deference to the Liberationists, still less in fear of them. Not on the ground of claims which the abolition of compulsory church-rates has scattered to the winds. Not on the ground of an imaginary Common-Law right. Not on the ground, which it has been reserved for the *Times* newspaper to break, of a still more imaginary "natural right," (as to which I would say, as Herodotus said about the dizzy dreams of some contemporary speculator, "When a man goes into the dark to argue, it is no use following him there to refute him;") but I urge concession because the operation of the law is attended with hardship, and because it is for the interest of the Church that this hardship should be removed.

APPENDIX.

MR. OSBORNE MORGAN'S BILL.

A.D. 1875. A Bill to amend the Burial Laws :

Whereas it is expedient to amend the law of burial in England :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

After passing of Act, notice may be given that burial will take place in church-yard without the rites of the Church of England.

1. *After the passing of this Act*, any person or persons having the charge of or being responsible for the burial of a deceased person may give twenty-four hours notice in writing, indorsed on the outside "Notice of Burial," to or leave at the usual place of abode of the rector, vicar, or other incumbent, or in his absence to the officiating minister in charge of any parish or ecclesiastical district, or any person appointed by him to receive such notice, that it is intended that such deceased person shall be buried within the churchyard or graveyard of such parish or ecclesiastical district without the service prescribed by law for the burial of the dead according to the rites of the Church of England : and, after receiving such notice, no rector, vicar, incumbent, or officiating minister shall be liable to any censure or penalty, ecclesiastical or civil, for permitting any such burial as aforesaid.

2. Such notice shall state the time at which such burial is proposed to take place, and in case the time so named be inconvenient on account of some other service having been previously to the receipt of such notice appointed to take place in such churchyard or graveyard, or the church or chapel connected therewith, the person receiving the notice shall, unless some other day or time shall be mutually arranged, within *eighteen hours* from the time of receiving such notice, signify in writing, to be delivered to or left at the usual place of abode of the person from whom such notice has been received, at which hour of the day named in the notice such burial shall take place; and it shall be lawful for the burial to take place, and it shall take place at the hour so appointed or mutually arranged, and in other respects in accordance with the notice; provided that, unless it shall be otherwise mutually arranged, the time of such burial shall be between the hours of ten o'clock in the forenoon and six o'clock in the afternoon if the burial be between the first day of April and the first day of October, and between the hours of ten o'clock in the forenoon and three o'clock in the afternoon if the burial be between the first day of October and the first day of April.

3. When no such intimation of change of hour is sent to the person from whom the notice has been received, the burial shall take place in accordance with and at the time specified in such notice.

4. At any burial under this Act all persons shall have free access to the churchyard or graveyard in which the same shall take place, and any person or persons who shall be thereunto invited, or be authorised by the person or persons having the charge of or being responsible for such burial, may conduct a service, or take part in any religious act thereat.

Burials to be conducted in a decent and orderly manner, and without obstruction. 5. All burials under this Act, whether with or without a religious service, shall be conducted in a decent and orderly manner, and every person guilty of any riotous, violent, or indecent behaviour at any burial under this Act, or wilfully obstructing such burial, or any service thereat, shall be guilty of a *misdemeanor*.

Act not to give right of burial where no previous right existed. 6. Nothing in this Act shall authorise the burial of any person in any place where, previous to the passing of this Act, such persons would have had no right of interment.

Burials under Act to be registered. 7. When any burial has taken place under this Act, the minister or other person who has conducted the religious service thereat, or if there be no religious service the person having the charge of or being responsible for such burial, shall, *on the day thereof, or the next day thereafter*, transmit a certificate of such burial, in the form of Schedule (A.) annexed to this Act, to the rector, vicar, incumbent, or other officiating minister in charge of the parish or district in which the churchyard or graveyard is situate, or to which it belongs, who shall thereupon enter such burial in the register of burials of such parish or district, and such entry shall form part thereof. Any person who shall wilfully make any false statement in such certificate shall be guilty of a *misdemeanor*.

Application of Act. Short title of Act. 8. This Act shall not apply to Scotland or to Ireland. 9. This Act may be cited as the "Burial Laws Amendment Act, 1875."

Schedule to which this Act refers.

Schedule (A.)

I of the minister [or the person] by whom the ceremony of burial was performed, [or the person having the charge of (or being responsible for) the burial of the deceased,] do hereby

MR. TALBOT'S BILL.

A Bill to amend and declare the Law of Interments in A.D. 1875.
Churchyards in England and Wales. —

Whereas it is expedient to amend and declare the law of interment:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament assembled, and by the authority of the same, as follows:

1. Where any person shall have expressed in writing, Funerals without his hand, his desire that the office for the burial of the dead, according to the rites of the Church of England, shall not be read at his funeral, or where any person or persons having the charge of or being responsible for the burial of any deceased person shall express in writing under their hands a like desire as regards such deceased person, and such writing shall be delivered a reasonable time before the funeral to the incumbent of the parish in which such deceased person shall have died, or to the clergyman ordinarily officiating in the churchyard of such parish, such incumbent or clergyman shall not be bound to attend at the interment of any deceased person, and the body of such deceased person shall be entitled to a decent and solemn interment in the churchyard of such parish ; but no service of any kind whatever shall be used, read, or performed at such interment within the churchyard or the precincts thereof.

2. This Act shall apply to England and Wales only. Extent of
3. This Act may be cited as "The Interment Act, ^{Act.} Short title,
1875."

As reference is frequently made, in discussing the question of burials in England, to the legislation which has taken place with regard to this subject for the benefit of Ireland, it has been thought useful to append the Acts of 1824 and 1868, applicable to that part of the United Kingdom.

ANNO QUINTO

GEORGII IV. REGIS.

C A P. XXV.

An Act to repeal so much of an Act passed in the Ninth Year of the Reign of King *William* the Third, as relates to Burials in suppressed Monasteries, Abbeys, or Convents, in *Ireland*; and to make further Provision with respect to the Burial, in *Ireland*, of Persons dissenting from the Established Church.

[15th April 1824.]

Whereas by an Act of the Parliament of *Ireland*, Irish Act, passed in the Ninth Year of the Reign of King 9 W. 3. *William* the Third, intituled *An Act for banishing all Papists exercising any Ecclesiastical Jurisdiction, and all Regulars of the Popish Clergy, out of the Kingdom*; it is amongst other things enacted, that no Person whatsoever should, from and after the Twenty-ninth of December One thousand six hundred and ninety-seven, bury any Dead in any suppressed Monastery, Abbey, or Convent, not made use of for celebrating Divine Service according to the Liturgy of the Church of *Ireland* by Law established, or within the Precincts thereof, under pain of forfeiting Ten Pounds, to be recovered as therein men-

tioned: And whereas it is expedient that the said Provision should be repealed; be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the said Provision shall, from and after the passing of this Act, stand and be repealed: Provided always, that nothing herein contained shall authorize the burying any Dead in any suppressed Monastery, Abbey, or Convent, or within the Precincts thereof, where the same have not been within Ten Years usually employed for such Purposes, unless with the Permission of the Proprietor of the Place on which the suppressed Monastery, Abbey, or Convent is situated.

Provision
in recited
Act as to
burying in
Monaster-
ies, &c.
repealed.
Not to au-
thorize
burying in
such
Places
where not
so used for
10 Years,
&c.

II. And whereas the Easement of Burial in the Church-yards of Protestant Churches has been long enjoyed by all Classes of His Majesty's Subjects; but such Burial may not by Law be allowed, unless the Burial Service ordained by the Liturgy of the Church of *Ireland* as by Law established, shall be celebrated thereat by the Rector, Vicar, Curate, or other Officiating Minister of the Church of *Ireland*, in whose Churchyard such Burial shall be had, or by some Person in Holy Orders of the Church of *Ireland*, duly authorized by him: And whereas such Minister of the Church of *Ireland* may not by Law dispense with the Celebration of such Service, or permit the Substitution of any other Service in lieu thereof; to the End thereof that all Classes of His Majesty's Subjects may be permitted to have the said Easement of Burial according to the Rites of the several Religions professed by them; be it enacted, That from and after the passing of this Act it shall and may be lawful for the Officiating Minister of the Church of *Ireland* by Law established, in each and every Parish in *Ireland*, upon application being

Officiating
Parish
Ministers
may grant
permission
to Clergy
men not of
the Church
of Ireland

duly authorized to perform any Church or Congregation not being of the Established Burial Service. made to him in Writing by any Clergyman or Minister of such Church or Congregation, stating the Death of any Member or Members of such Church or Congregation, for Permission to perform the Burial Service at the Grave of such Person or Persons in the Churchyard of such Parish, according to the Rites of such Church or Congregation, to grant Permission accordingly: Provided always, that such Permission for the Performance of such Burial Service at the Grave, according to the Rites of such Church or Congregation, shall be in Writing; and that in order to prevent any Interruption of, or Interference with the Celebration of any of the Rites of the Church of *Ireland* by Law established, such Interment and Service shall be had and celebrated at such Time only as shall be appointed in such Permission by such Officiating Minister of the Church of *Ireland*.

If Permission with-held, Cause shall in any Case be withheld, the Cause of withholding declared by the same shall be specially and distinctly declared, in Minister in Writing, by such Officiating Minister of the Church of *Ireland*.

III. And be it further enacted, That if such Permission shall in any Case be withheld, the Cause of withholding the same shall be specially and distinctly declared, in Writing, by such Officiating Minister of the Church of *Ireland*, one Part of which written Declaration shall forthwith be delivered to the Person making such Application as aforesaid, and one other part thereof shall be forthwith transmitted to the Bishop of the Diocese in which such Churchyard shall be situated, and shall be by him transmitted forthwith, signed by the Register of such Diocese, to the Lord Lieutenant or other Chief Governor or Governors of *Ireland*.

Officiating Ministers not to celebrate Burial Service unless required. IV. And be it further enacted, That it shall not be necessary for such Officiating Minister of the Church of *Ireland* to celebrate, nor shall he celebrate the Burial Service ordained by the Liturgy of the Church of *Ireland*.

land as by Law established, at the Interment of any Person not being of the Established Church of *Ireland*, unless at the Desire of the Person so applying, at the Interment of such Person, specified in the Application and Permission ; any Law, Canon, or Usage to the contrary notwithstanding.

V. And be it further enacted, That if after such Permission granted as aforesaid, any Person or Persons shall obstruct or interrupt the Performance of the said Burial Service at the Grave of the Person specified in such Permission, such Person or Persons so obstructing or interrupting shall be deemed guilty of a Misdemeanor, and shall be liable to be prosecuted therefor.

Obstructing Burial Service deemed a Misdemeanor.

ANNO TRICESIMO PRIMO & TRICESIMO SECUNDO
VICTORIAE REGINÆ.

C A P. C I I I.

An Act to amend the Law which regulates the Burials of Persons in *Ireland* not belonging to the Established Church. [31st July 1868.]

Whereas it is expedient to amend the Law of Burial in *Ireland* :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this

present Parliament assembled, and by the Authority of the same, as follows :

Where Burials of Persons not belonging to United Church of England and Ireland take place in Burial Grounds of such Church, Priest, &c. of other Denomination may perform Service.

1. That whenever after the passing of this Act any Person who at the Time of his or her Death shall not have been a Member of and in communion with the United Church of *England* and *Ireland* shall be buried, as of Right, within any Churchyard or Graveyard, the Soil or Freehold whereof shall be vested in any Rector, Vicar, or other Incumbent, it shall be lawful for the Priest or Minister of the Religious Denomination to which such Person shall have belonged at the Time of his or her Death, and he is hereby empowered, to attend such Burial, and to read such Prayers or perform such Burial Service at the Grave in such Churchyard or Graveyard as is usual and customary at Burials of Persons belonging to such Religious Denomination ; and any person wilfully obstructing such Prayers or Burial Service shall be deemed guilty of a Misdemeanor : Provided always, that such Prayers shall not be read nor such Burial Service performed either wholly or in part during the Time of the Celebration of the Divine Service or any Rite or Ceremony of the said United Church, or during the catechising or other Instruction of Children or young Persons in the Church or Chapel to which such Churchyard or Graveyard belongs, nor within Half an Hour before the Commencement or after the Conclusion of any such Celebration, catechising, or Instruction, nor during the Time at which the Incumbent or Minister of such Church or Chapel, or any other Minister or other Ecclesiastical Person, shall be performing the Burial Service in such Churchyard or Graveyard nor during the Performance of any other Burial Service therein : Provided always, that nothing in this Act shall confer any Right of Burial where no such Right already exists, or shall affect the Rights or

Privileges of any Ordinary, Rector, Vicar, or other Incumbent.

2. Nothing herein contained shall authorize or justify any Interference with or Interruption of the Celebration of Divine Service in the Church or Chapel to which such Churchyard or Graveyard may be attached or belong, or the Obstruction of Persons going thereto or returning therefrom.

3. Such Priest or Minister who may purpose to attend such Burial shall, Twenty-four Hours before the reading of such Prayers or the Performance of such Burial Service, serve or cause to be served upon the Person appointed by the Rector, Vicar, or other Incumbent of the Parish to receive such Notices a Notice in Writing, signed with his Name, stating the Name and late Residence of the Person about to be buried, and the Hour at which he purposes to read such Prayers or perform such Burial Service; and if there be no Celebration, catechising, or Instruction already appointed to take place, or other Burial Service appointed to be performed at the Time specified in the Notice, of which he is to be then and there informed, he shall read such Prayers or perform such Service at the Time for which he has given Notice; but if any Celebration, catechising, Instruction, or other Burial Service shall have been already appointed, then he shall appoint some other convenient Time before or after such Celebration, catechising, Instruction, or other Burial Service.

4. And whereas many Parish Churches have of late Years been erected on a new Site, having attached to them small Churchyards given or purchased for the sole Use of Persons attending the Worship of the Church, and in Size proportioned to the Wants of the Congregation, leaving the old Churchyard for the general Use of

Prohibition of Interference with Burial.

Notice to be given of the Time at which it is proposed that the Burial shall take place.

Lord Lieutenant in Council to have Power to exempt certain Churchyards.

the Parishioners: and whereas many Perpetual Cures and District Parishes have been erected of late Years, and Churches built in them, with small Graveyards intended solely for the Use of the Congregations of such Churches: Be it therefore enacted, That it shall be lawful for the Lord Lieutenant in Council, on Application from the Incumbents of any such Church, to declare the same to be exempt, and which Exemption shall be published in the *Dublin Gazette*, and thereupon such Churchyards shall be exempted from the Operation of this Act.

Extent of 5. This Act shall extend to *Ireland* only.
Act.







